IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Bail Appl..No. 6716 of 2007()

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CRIME NO.415/07 OF SULTHAN BATHERY POLICE STATION
CRMP.1279/2007 of DISTRICT COURT, KALPETTA

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PETITIONER/2ND ACCUSED

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BALAN @ GOPALAKRISHNAN,
S/O.KRISHNAN NAIR, KINDANGIL VALAPPIL
HOUSE, BEENACHI PO., SULTHAN BATHERY TALUK,
WAYANAD DISTRICT.

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS: COMPLAINANT

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THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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B.A.No. 6716 of 2007

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Dated this the 15th day of November, 2007

**O R D E R**

Application for anticipatory bail. The petitioner is the second accused in a crime, which was registered initially under Sections 324 r/w. 34 I.P.C. In the course of the investigation, realising that the victim/Rajesh had suffered a grievous hurt, section of the offence has been altered and now investigation is continuing for the offence under Section 326 I.P.C. The first accused has already been arrested. The petitioner apprehends imminent arrest.

2. The crux of the allegations raised by the defacto complainant in the F.I. statement is that the informant and one Rajesh went to the hotel run by the petitioner herein to have their food. There was a dispute regarding payment of the bill between the petitioner herein on the one hand and the informant and his friend Rajesh on the other. The petitioner allegedly insisted that

the informant and his friend must pay the bill for the food taken by Phalgunan/A1. They refused. Consequently, the said Phalgunan and the petitioner herein (A1 and A2) allegedly attacked the informant and the friend Rajesh. Rajesh was beaten with a log of wood and had suffered a fracture on the forearm. It is in these circumstances that the F.I.R. was registered.

3. The learned counsel for the petitioner submits that the real incident did not take place in the manner alleged by the prosecution at all. According to him, there was a dispute between the injured Rajesh and the informant about the payment of the bill. The dispute was between them. Since there was wordy and physical altercation between them, the petitioner and the said Phalgunan had only attempted to separate them. People had collected and the informant and his friend Rajesh tried to escape from the scene. Rajesh fell in the course of the incident and allegedly suffered injuries. The learned counsel submits that totally false allegations are now being raised against the petitioner. He may, in these circumstances, be granted anticipatory bail.

4. The learned counsel further submits that the petitioner herein had complained before the police on the next day. Receipt of the complaint was not disputed by the police. The said complaint has been placed before me for my perusal. The version advanced about the said complaint does not at all tally with the version advanced by the counsel now. Of course, there is an allegation that some incident had taken place in the hotel and that the informant and his friend were responsible for the incident.

5. The case diary has been placed before me and perused by me. All the relevant inputs have been considered. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. It does not at all stand to reason with the available inputs to assume that it was really a dispute between the informant and his friend Rajesh. I shall not embark on any detailed discussion on merit about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that, I agree with the learned Prosecutor that this is a fit case where the petitioner must be directed

to appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

**(R. BASANT)**
Judge

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